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SUBJECT: COURT RULES CANADA MUST SEEK KHADR'S REPATRIATION

¶1. (U) Summary: On April 23, a Federal Court judge ruled that the Canadian government's refusal to seek Omar Khadr's repatriation from the United States violated his constitutional rights and that the government must press the United States to return him to Canada. The government may appeal the decision, and is unlikely to seek immediate repatriation. End Summary.

¶2. (U) Federal Court Justice James O'Reilly ruled on April 23 that "the ongoing refusal" of the Canadian government to request Canadian citizen Omar Khadr's repatriation from Guantanamo Bay "offends a principle of fundamental justice and violates Mr. Khadr's rights under s.7 of the Charter [of Rights]." (Note: Section 7 provides for the right to life, liberty, and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. End note) The judge also ruled that Canada must present a request to the United States for Khadr's repatriation "as soon as practicable."

¶3. (U) Justice O'Reilly cited the following factors relevant to his decision:

- Khadr received no special status as a minor;
- Khadr's need for medical attention;
- Khadr's lack of education, access to consular assistance, and legal counsel;
- Khadr's inability to challenge his detention or conditions of confinement in a court of law;
- Khadr's detention in an unfamiliar, remote, and isolated prison, with no family contact; and,
- "the multiplicity of departures from international norms that have taken place."

¶4. (U) Justice O'Reilly concluded that "the principles of fundamental justice obliged Canada to protect Mr. Khadr by taking appropriate steps to ensure that his treatment accorded with international human rights norms." Although the judge noted that the Canadian government had protested some aspects of Khadr's treatment at Guantanamo Bay, he found that it had also in part condoned his mistreatment when Canadian officials interrogated him at the prison in 2004 despite being aware that Khadr had been subjected to the so-called "frequent flyer program" treatment technique.

¶5. (U) In the parliamentary Question Period shortly after the release of the ruling, Prime Minister Harper indicated only that the government would review the decision. Foreign Minister Lawrence Cannon, however, commented that the government would "seriously examine the possibility of appealing the decision."

¶6. (SBU) Comment: While Omar Khadr's continued detention has provided the Liberals repeated opportunities to criticize the current government, the reality is that the Liberals were no more pro-active in seeking his repatriation when they were in power, and that the Khadr family as a whole remains politically poisonous to

the general public. The Conservatives have little if any political capital to lose from sticking to their position of allowing the U.S. military's legal process against Khadr to take its course. The government is unlikely to rush to Washington with a formal repatriation request, despite the court ruling.

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